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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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9 Attorneys for Plaintiff

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 GREG SUTTERFIELD, Derivatively On Behalf
of MICROMUSE, INC.,

14 Plaintiff,
15 vs.

16 LLOYD CARNEY, et al.,

17 Defendants.

18 - and -

19 MICROMUSE, INC., a Delaware corporation,
20

21 Nominal Defendant.
22

No. C-04-0893 BZ

**ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE**

1 WHEREAS, the parties have made application, pursuant to Federal Rule of Civil
2 Procedure 23.1, for an order approving the settlement (the "Settlement") of the Federal
3 Derivative Action, in accordance with the Stipulation and Agreement of Settlement dated
4 September 28, 2005 (the "Stipulation"), which, together with the Exhibits annexed thereto, sets
5 forth the terms and conditions set forth therein; and

6 WHEREAS, all capitalized terms contained herein shall have the same meanings as set
7 forth in the Stipulation (in addition to those capitalized terms defined herein); and

8 WHEREAS, the Court having read and considered the Stipulation and the Exhibits
9 annexed thereto:

10 NOW, THEREFORE, IT IS HEREBY ORDERED:

11 1. The Court does hereby preliminarily approve, subject to further consideration at
12 the Settlement Hearing described below, the Stipulation and the Settlement set forth therein,
13 including the terms and conditions for settlement and dismissal with prejudice of the Federal
14 Derivative Action.

15 2. A hearing (the "Settlement Hearing") shall be held before this Court on
16 December 7, 2005, at 1:30 p.m., at the United States Courthouse, 450 Golden Gate Ave, 15th
17 Floor, Courtroom G, San Francisco, California, 94102, to determine whether the Settlement of
18 the Federal Derivative Action on the terms and conditions provided for in the Stipulation is fair,
19 reasonable and adequate to Micromuse and all persons who currently hold shares of Micromuse
20 ("Current Micromuse Shareholders") and should be approved by the Court; and whether a
21 Judgment as provided in ¶ 1.15 of the Stipulation should be entered herein. The court may
22 adjourn the Settlement Hearing or modify any of the dates set forth herein without further notice
23 to Current Micromuse Shareholders.

24 3. The Court approves, as to form and content, the Short Form of Notice of
25 Proposed Settlement of Derivative Action ("Short Version Derivative Notice"), the Long Form
26 of Notice of Proposed Settlement of Derivative Action for Posting on Website ("Long Version
27 Derivative Notice"), and the Summary Notice for Publication of Settlement of Derivative Action
28 ("Summary Derivative Notice") annexed respectively as Exhibits B-1, B-2, and B-3 hereto, and
ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE

1 finds that the mailing and distribution of the Short Version Derivative Notice, posting of the
2 Long Version Derivative Notice on the Micromuse website, and publication of the Summary
3 Derivative Notice, substantially in the manner and form set forth in this Order, meets the
4 requirements of Federal Rule of Civil Procedure 23.1 and due process under the United States
5 Constitution and any other applicable laws, is the best notice practicable under the
6 circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

7 4. A.B. Data. Ltd. (P.O. Box 170500, Milwaukee, Wisconsin, 53217) is authorized
8 to act as "Notice Administrator" to supervise and administer the notice procedure as more fully
9 set forth below:

10 (a) Not later than October 7, 2005, the Notice Administrator shall cause a
11 copy of the Short Version Derivative Notice substantially in the form annexed as Exhibit B-1 to
12 be mailed by first class mail to the Current Micromuse Shareholders;

13 (b) Not later than October 7, 2005, Defendants shall cause a copy of the Long
14 Version Derivative notice substantially in the form annexed as Exhibit B-2 to be posted on the
15 Micromuse website;

16 (c) Not later than October 17, 2005, the Notice Administrator shall cause the
17 Summary Derivative Notice substantially in the form annexed as Exhibit B-3 to be published
18 once in Investor's Business Daily; and

19 (d) Not later than November 15, 2005, the Notice Administrator shall serve
20 on Derivative Plaintiff's Counsel and Derivative Plaintiff's Counsel shall file with the Court
21 proof, by affidavit or declaration, of such mailing and publishing.

22 5. Nominees who held or hold the common stock of Micromuse on behalf of any of
23 the Current Micromuse Shareholders shall send the Short Version Derivative Notice to such
24 beneficial owners of Micromuse common stock within ten (10) days after receipt thereof, or
25 send a list of the names and addresses of such beneficial owners to the Notice Administrator
26 within ten (10) days of receipt thereof, in which event the Notice Administrator shall promptly
27 mail the Short Version Derivative Notice to such beneficial owners.
28

1 6. All Current Micromuse Shareholders shall be bound by all orders, determinations
2 and judgments in the Federal Derivative Action concerning the Settlement, whether favorable or
3 unfavorable to the Current Micromuse Shareholders.

4 7. Pending final determination of whether the Settlement should be approved and
5 applied in the Federal Derivative Action, all proceedings and all further activity between the
6 Settling Parties regarding or directed toward the Federal Derivative Action, and save for those
7 activities and proceedings relating to the Stipulation and the Settlement, shall be stayed.

8 8. Pending final determination of whether the Settlement should be approved,
9 Derivative Plaintiff shall not commence, maintain or prosecute against Defendants or the other
10 Released Persons, or any of them, any action or proceeding in any court or tribunal asserting any
11 of the Released Claims.

12 9. Derivative Plaintiff's Counsel shall apply to the Court for an award of attorneys'
13 fees and for reimbursement of expenses on or before November 15, 2005.

14 10. Any Current Micromuse Shareholder who wishes to object to the Settlement of
15 the Federal Derivative Action, or to Derivative Plaintiff's Counsel's application for an award of
16 attorneys' fees and for reimbursement of expenses, shall have a right to appear and be heard at
17 the Settlement Hearing. Any Current Micromuse Shareholder may enter an appearance through
18 counsel of such member's own choosing and at such member's own expense or may appear on
19 their own. The Short Version Derivative Notice and Long Version Derivative Notice shall state
20 that to object, Current Micromuse Shareholders must send a signed letter stating the reasons for
21 any objection to the proposed settlement in *Greg Sutterfield, derivatively and on behalf of*
22 *Micromuse, Inc. v. Lloyd Carney, et al., Defendants and Micromuse, Inc., Nominal Defendant,*
23 *Case No. C-04-0893 BZ,* including their name, address, telephone number and signature, and
24 proof of current ownership and the date(s) of purchase(s) of Micromuse stock. The Short
25 Version Derivative Notice and Long Version Derivative Notice shall further require that the
26 objections be filed with the Claims Administrator on or before November 15, 2005.

27 11. Any reply papers in response to any objections or in further support of the
28 Settlement shall be filed with the Court and served on or before November 29, 2005.

ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE

No. C-04-0893 BZ

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1 12. All reasonable expenses incurred in identifying and notifying Current Micromuse
2 Shareholders, shall be paid as set forth in the Stipulation.

3 13. If a Current Micromuse Shareholder fails to object to the Settlement of the
4 Federal Derivative Action, such Shareholder will have waived any and all objections and shall
5 forever be barred from making any objection to or otherwise challenging the Federal Derivative
6 Action Settlement, the Judgment dismissing the Federal Derivative Action, or any other
7 proceedings in the action, including an appeal.

8 14. Neither the Stipulation nor any document referred to therein nor any action taken
9 to carry out the Stipulation is, may be construed as or may be used as an admission by or against
10 the Defendants, or any of them, of any fault, wrongdoing or liability whatsoever.

11 15. The Court reserves the right to adjourn the date of the Settlement Hearing or
12 modify any other dates set forth herein without further notice to the Current Micromuse
13 Shareholders, and retains jurisdiction to consider all further applications arising out of or
14 connected with the Settlement. The Court may approve the Settlement, with such modifications
15 as may be agreed to by the Settling Parties, if appropriate, without further notice to the Current
16 Micromuse Shareholders.

17
18 IT IS SO ORDERED

19
20
21 Dated: 30 Oct 05


HONORABLE BERNARD ZIMMERMAN
UNITED STATES MAGISTRATE JUDGE


Legal Tabs Co. 800-322-3022 

EXHIBIT B-1

1 FEDERMAN & SHERWOOD

William B. Federman

2 120 N. Robinson, Suite 2720

3 Oklahoma City, OK 73102

Telephone: (405) 235-1560

4 Facsimile: (405) 239-2112

5 GREEN WELLING LLP

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Telephone: (415) 477-6700

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9 Attorneys for Plaintiff

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 GREG SUTTERFIELD, Derivatively On Behalf
of MICROMUSE, INC.,

No. C-04-0893 BZ

14 Plaintiff,

15 vs.

16 LLOYD CARNEY, et al.,

17 Defendants.

18 - and -

19 MICROMUSE, INC., a Delaware corporation,

20
21 Nominal Defendant.

Date: December 7, 2005

Time: 1:30 p.m.

Place: Courtroom G, 15th Floor

Judge: Bernard Zimmerman

**FEDERAL DERIVATIVE ACTION
NOTICE OF PROPOSED
SETTLEMENT, FINAL APPROVAL
HEARING, AND MOTION FOR
ATTORNEY FEES (SHORT VERSION)**

1 **TO: ALL HOLDERS OF MICROMUSE, INC. COMMON STOCK. PLEASE READ**
2 **THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS.**

3 THIS NOTICE RELATES TO THE SETTLEMENT OF A SHAREHOLDERS' DERIVATIVE
4 ACTION AND CLAIMS ASSERTED THEREIN ON BEHALF OF MICROMUSE.

- 5 • The Settlement resolves a lawsuit alleging that certain of Micromuse's officers
6 and directors breached their fiduciary duties to Micromuse.
- 7 • The Settlement will require Micromuse to maintain and adopt certain therapeutic
8 governance measures for the benefit of the Corporation and all Micromuse
9 shareholders, which are intended to avoid the types of problems complained of in
10 the Federal Derivative Action, and which shall remain in effect for at least two
11 (2) years from the date they are adopted.
- 12 • Your legal rights will be affected whether you act, or do not act. Read this
13 Notice carefully.

13 This Notice is given pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and an
14 Order of the United States District Court for the Northern District of California (the "Court").
15 The purpose of this Notice is to inform you of the proposed Settlement of the Federal Derivative
16 Action (the "Action"), and of the hearing to be held by the Court to consider: (1) the fairness,
17 reasonableness, and adequacy of the Settlement; and (2) the applications for attorneys' fees. This
18 Notice describes rights you may have under the proposed Settlement and what steps you may
19 take in relation to Action. This Notice is not an expression of any opinion by the Court as to the
20 merits of any claims or any defenses asserted by any party in this Action, or the fairness or
21 adequacy of the proposed Settlement.

22 If you are a current Micromuse shareholder, you may object to the Settlement or any of
23 its terms. To object, you may write to the Claims Administrator setting forth your objection.
24 Further details regarding how and when to object are set forth below. If you are a current
25 Micromuse shareholder and do not object to the Settlement, you will have waived any and all
26 objections and shall forever be barred from making any objection to or otherwise challenging the
27 Settlement or any other proceedings in the Action, including an appeal.

1 Concurrently with this Settlement, a related class action lawsuit is being settled as well.
2 The class action alleges that Micromuse and certain of its officers and directors misled investors
3 by artificially inflating the price of Micromuse common stock and "smoothing" earnings in order
4 to meet Wall Street's earnings expectations for the Company. A separate Notice of Proposed
5 Settlement of the Class Action is included in this mailing. The settlement of the class action may
6 affect your rights as described in that separate Notice. The Settlement of this Action is
7 contingent on the Court's approval of the settlement of the related class action lawsuit.

8 SUMMARY OF SETTLEMENT AND RELATED MATTERS

9 1. THE LITIGATION

10 The Federal Derivative Action, filed on March 4, 2004, alleges that the Individual
11 Defendants, current or former officers and directors of Micromuse, owed a duty to Micromuse
12 and its shareholders to be reasonably informed about the business and operations of the
13 Company. Plaintiff further alleges that the Individual Defendants breached these duties by
14 actively participating in, encouraging, sponsoring and/or approving of the wrongful acts or
15 omissions complained of in the Complaint, or purposely or recklessly disregarding those
16 wrongful acts or omissions. Defendants, while continuing to deny all allegations of wrongdoing
17 or liability, desire to settle and terminate the existing and potential claims against them, without
18 in any way acknowledging any fault or liability.

19 A separate group of plaintiffs have filed derivative actions on behalf of Micromuse in
20 state court, called *In re Micromuse Inc. Derivative Litigation*, California Superior Court, County
21 of San Francisco, Lead Case No. 04-428489 (the "State Derivative Action"). The State
22 Derivative Action makes allegations similar to those alleged in this Action: breach of fiduciary
23 duty, abuse of control, gross mismanagement, waste of corporate assets, unjust enrichment, and
24 violations of the California Corporations Code, but includes an insider selling claim not currently
25 contained in this Action. The state court has overruled in part defendants' demurrer to the
26 complaint in the State Derivative Action and has delayed further proceedings in the State
27 Derivative Action pending approval of this Settlement. If the Settlement of this Action is
28 approved by the Court, the parties to the Settlement intend that it will bar other claims asserted
FEDERAL DERIVATIVE ACTION NOTICE OF PROPOSED SETTLEMENT (SHORT VERSION)

1 on behalf of Micromuse, including the claims asserted in the State Derivative Action. Further
2 information regarding the State Derivative Action may be obtained by contacting plaintiffs'
3 counsel for the State Derivative Plaintiffs: Jeffrey P. Fink, Robbins, Umeda & Fink, LLP, 610
4 West Ash Street, Suite 1800, San Diego, CA 92101, Telephone (619) 525-3990.

5 **2. FURTHER INFORMATION AVAILABLE**

6 For a more detailed statement of the matters involved in this Action, reference is made to
7 the files in this Action, which may viewed online on the Stanford Securities Class Action
8 Clearinghouse website at <http://securities.stanford.edu/1029/MUSEE-01/> (class action), or by
9 visiting the "Pacer" website for the United States District Court for the Northern District of
10 California, at <https://ecf.cand.uscourts.gov/cand/index.html>. Alternatively, the files may be
11 inspected in person at the Office of the Clerk of the United States District Court for the Northern
12 District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102, during
13 regular business hours.

14 In addition, further information regarding the Action may be obtained by contacting:

15 William B. Federman
16 120 N. Robinson, Suite 2720
17 Oklahoma City, OK 73102
Telephone: (405) 235-1560
Counsel for Plaintiff

18 **3. THE SETTLEMENT**

19 Prior to entering into the Stipulation, Plaintiff's Counsel conducted an investigation
20 relating to the events and transactions alleged in the Complaint. Plaintiff's Counsel analyzed
21 evidence, documents and public filings of Micromuse, researched the applicable law with respect
22 to the claims against Defendants and the potential defenses thereto, and conducted confirmatory
23 discovery concerning the allegations in the Federal Derivative Action. Plaintiff, by his counsel,
24 conducted arms'-length negotiations with counsel for Defendants with the assistance of retired
25 Judge Eugene Lynch, with respect to a compromise and settlement of the Federal Derivative
26 Action with a view to settling the issues in dispute and achieving the best relief possible
27 consistent with the interest of Micromuse and its shareholders. The decision by Plaintiff's
28 Counsel and Defendants' Counsel to enter into the Settlement was made with knowledge of the
FEDERAL DERIVATIVE ACTION NOTICE OF PROPOSED SETTLEMENT (SHORT VERSION)

1 facts and circumstances underlying Plaintiff's claims and the strengths and weaknesses of those
2 claims.

3 Counsel for Plaintiff believes that the Settlement described herein confers very
4 substantial and immediate benefits upon Micromuse's shareholders. Plaintiff's Counsel deems
5 such settlement to be fair, reasonable and adequate, and in the best interests of Micromuse's
6 shareholders.

7 In full and final settlement of the Action, Micromuse will maintain and adopt certain
8 corporate governance measures, which are intended to avoid the type of problems complained of
9 in the Action, and which shall remain in effect for at least two (2) years from the date they are
10 adopted. A detailed listing of the corporate governance measures that will be maintained or
11 adopted as a result of the Settlement may viewed online at Micromuse's web page,
12 www.micromuse.com, by clicking on "company" and then on "investor relations," or by typing
13 www.corporate-ir.net/ireye/ir_site.zhtml?ticker=MUSE&script=2100. In consideration for
14 implementing these therapeutic corporate governance measures, upon the "Effective Date"
15 Plaintiff and Micromuse (as a nominal defendant in the Federal Derivative Action) will release
16 all claims in the Derivative Action against the "Released Parties." Further detail regarding the
17 scope of the releases contained in the Settlement can be viewed online at www.micromuse.com,
18 by clicking on "company" and then on "investor relations," or by typing [www.corporate-](http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=MUSE&script=2100)
19 [ir.net/ireye/ir_site.zhtml?ticker=MUSE&script=2100](http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=MUSE&script=2100).

20 Plaintiff's Counsel in the Federal Derivative Action intend to apply for fees and
21 reimbursement of expenses of up to \$250,000.00 incurred in pursuing the Federal Derivative
22 Action. Plaintiff's Counsel in the Federal Derivative Action have expended considerable time
23 and effort in the prosecution of this litigation. Plaintiff's Counsel worked wholly on a
24 contingency basis, and have advanced expenses of the litigation, in the expectation that if they
25 were successful in obtaining relief in the Federal Derivative Action, they would be paid for their
26 time and effort in prosecuting the litigation.

27 **4. THE FAIRNESS HEARING**

A hearing on the fairness of the Settlement will be held before the Honorable Bernard Zimmerman in the United States Courthouse, 450 Golden Gate Avenue, 15th Floor, Courtroom G, San Francisco, California at 1:30 p.m., on December 7, 2005 (the "Settlement Fairness Hearing"). The purpose of the Settlement Fairness Hearing will be to determine (a) whether the Settlement of the Federal Derivative Action is fair, reasonable and adequate; and (b) whether the application for attorneys' fees and reimbursement of expenses should be approved. The Court may adjourn or continue the Settlement Fairness Hearing without further notice to you or to Micromuse's shareholders. If you intend to attend the Settlement Fairness Hearing, you should confirm the date and time with Plaintiff's Counsel.

5. THE RIGHT TO OBJECT

You may object to the Settlement. To object, you must send a signed letter as outlined below, stating that you object to the proposed settlement in *Greg Sutterfield, derivatively and on behalf of Micromuse, Inc. v. Lloyd Carney, et al., Defendants and Micromuse, Inc., Nominal Defendant*, Case No.C-04-0893-BZ. Be sure to include your name, address, telephone number and your signature; provide proof of current ownership and the date(s) of purchase(s) of Micromuse stock, and state the reasons why you object to the Federal Derivative Action Settlement. Your objection must be filed with the Claims Administrator at the following address on or before November 15, 2005:

Claims Administrator
Sutterfield v. Carney et al.
 c/o A.B. Data. Ltd.
 P.O. Box 170500
 Milwaukee, Wisconsin, 53217

Dated:

By Order of the Court
 San Francisco, California
 CLERK OF THE COURT


Legal Tabs Co. 800-322-3022 

EXHIBIT B-2

1 FEDERMAN & SHERWOOD

William B. Federman

2 120 N. Robinson, Suite 2720

3 Oklahoma City, OK 73102

Telephone: (405) 235-1560

4 Facsimile: (405) 239-2112

5 GREEN WELLING LLP

Robert S. Green (SBN 136183)

6 595 Market St., Suite 2750

7 San Francisco, CA 94105

Telephone: (415) 477-6700

8 Facsimile: (415) 477-6710

9 Attorneys for Plaintiff

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 GREG SUTTERFIELD, Derivatively On Behalf
of MICROMUSE, INC.,

No. C-04-0893 BZ

14 Plaintiff,

15 vs.

16 LLOYD CARNEY, et al.,

17 Defendants.

18 - and -

19 MICROMUSE, INC., a Delaware corporation,

20 Nominal Defendant.
21
22
23
24
25
26
27
28

Date: December 7, 2005

Time: 1:30 p.m.

Place: Courtroom G, 15th Floor

Judge: Bernard Zimmerman

**FEDERAL DERIVATIVE ACTION
NOTICE OF PROPOSED
SETTLEMENT, FINAL APPROVAL
HEARING, AND MOTION FOR
ATTORNEY FEES - (LONG VERSION
FOR POSTING ON WEBSITE)**

**TO: ALL HOLDERS OF MICROMUSE, INC. COMMON STOCK. PLEASE READ
THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS.**

THIS NOTICE RELATES TO THE SETTLEMENT OF A SHAREHOLDERS' DERIVATIVE
ACTION AND CLAIMS ASSERTED THEREIN ON BEHALF OF MICROMUSE.

- The Settlement resolves a lawsuit alleging that certain of Micromuse's officers and directors breached their fiduciary duties to Micromuse.
- The Settlement will require Micromuse to maintain and adopt certain therapeutic governance measures for the benefit of the Corporation and all Micromuse shareholders, which are intended to avoid the types of problems complained of in the Federal Derivative Action, and which shall remain in effect for at least two (2) years from the date they are adopted.
- Your legal rights will be affected whether you act, or do not act. Read this Notice carefully.

This Notice is given pursuant to Rule 23.1 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Northern District of California (the "Court"). The purpose of this Notice is to inform you of the proposed Settlement of the Federal Derivative Action (the "Action"), and of the hearing to be held by the Court to consider: (1) the fairness, reasonableness, and adequacy of the Settlement; and (2) the applications for attorneys' fees. This Notice describes rights you may have under the proposed Settlement and what steps you may take in relation to this Action. This Notice is not an expression of any opinion by the Court as to the merits of any claims or any defenses asserted by any party in this Action, or the fairness or adequacy of the proposed Settlement.

If you are a current Micromuse shareholder, you may object to the Settlement or any of its terms. To object, you must write to the Claims Administrator setting forth your objection. Further details regarding how and when to object are set forth below. If you are a current Micromuse shareholder and do not object to the Settlement, you will have waived any and all objections and shall forever be barred from making any objection to or otherwise challenging the Settlement or any other proceedings in the Action, including an appeal.

1 Concurrently with this Settlement, a related Class Action lawsuit is being settled as well.
2 The Class Action alleges that Micromuse and certain of its officers and directors misled investors
3 by artificially inflating the price of Micromuse common stock and "smoothing" earnings in order
4 to meet Wall Street's earnings expectations for the Company. A separate Notice of Proposed
5 Settlement of the Class Action is included in this mailing. The settlement of the Class Action
6 may affect your rights as described in that separate Notice. The Settlement of this Action is
7 contingent on the Court's approval of the settlement of the related Class Action lawsuit.

8 SUMMARY OF SETTLEMENT AND RELATED MATTERS

9 1. THE LITIGATION

10 The Federal Derivative Action, filed on March 4, 2004, alleges that the Individual
11 Defendants, current or former officers and directors of Micromuse, owed a duty to Micromuse
12 and its shareholders to be reasonably informed about the business and operations of the
13 Company. Plaintiff further alleges that the Individual Defendants breached these duties by
14 actively participating in, encouraging, sponsoring and/or approving of the wrongful acts or
15 omissions complained of in the Complaint, or purposely or recklessly disregarding those
16 wrongful acts or omissions. Defendants, while continuing to deny all allegations of wrongdoing
17 or liability, desire to settle and terminate the existing and potential claims against them, without
18 in any way acknowledging any fault or liability.

19 A separate group of plaintiffs have filed derivative actions on behalf of Micromuse in
20 state court, called *In re Micromuse Inc. Derivative Litigation*, California Superior Court, County
21 of San Francisco, Lead Case No. 04-428489 (the "State Derivative Action"). The State
22 Derivative Action makes allegations similar to those alleged in this Action: breach of fiduciary
23 duty, abuse of control, gross mismanagement, waste of corporate assets, unjust enrichment, and
24 violations of the California Corporations Code, but includes an insider selling claim not currently
25 contained in this Action. The state court has overruled in part defendants' demurrer to the
26 complaint in the State Derivative Action and has delayed further proceedings in the State
27 Derivative Action pending approval of this Settlement. If the Settlement of this Action is
28 approved by the Court, the parties to the Settlement intend that it will bar other claims asserted

FEDERAL DERIVATIVE ACTION NOTICE OF PROPOSED SETTLEMENT (VERSION FOR WEBSITE)
No. C-04-0893 BZ
SF/21636952.1

on behalf of Micromuse, including the claims asserted in the State Derivative Action. Further information regarding the State Derivative Action may be obtained by contacting plaintiffs' counsel for the State Derivative Plaintiffs: Jeffrey P. Fink, Robbins, Umeda & Fink, LLP, 610 West Ash Street, Suite 1800, San Diego, CA 92101, Telephone (619) 525-3990.

2. FURTHER INFORMATION AVAILABLE

For a more detailed statement of the matters involved in this Action, reference is made to the files in this Action, which may viewed online on the Stanford Securities Class Action Clearinghouse website at <http://securities.stanford.edu/1029/MUSEE-01/> (class action), or by visiting the "Pacer" website for the United States District Court for the Northern District of California, at <https://ecf.cand.uscourts.gov/cand/index.html>. Alternatively, the files may be inspected in person at the Office of the Clerk of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102, during regular business hours.

In addition, further information regarding the Action may be obtained by contacting:

William B. Federman
120 N. Robinson, Suite 2720
Oklahoma City, OK 73102
Telephone: (405) 235-1560
Counsel for Plaintiff

3. THE SETTLEMENT

Prior to entering into the Stipulation, Plaintiff's Counsel conducted an investigation relating to the events and transactions alleged in the Complaint. Plaintiff's Counsel analyzed evidence, documents and public filings of Micromuse, researched the applicable law with respect to the claims against Defendants and the potential defenses thereto, and conducted confirmatory discovery concerning the allegations in the Federal Derivative Action. Plaintiff, by his counsel, conducted arms'-length negotiations with counsel for Defendants with the assistance of retired Judge Eugene Lynch, with respect to a compromise and settlement of the Federal Derivative Action with a view to settling the issues in dispute and achieving the best relief possible consistent with the interest of Micromuse and its shareholders. The decision by Plaintiff's

1 Counsel and Defendants' Counsel to enter into the Settlement was made with knowledge of the
2 facts and circumstances underlying Plaintiff's claims and the strengths and weaknesses of those
3 claims.

4 Counsel for Plaintiff believes that the Settlement described herein confers very
5 substantial and immediate benefits upon Micromuse's shareholders. Plaintiff's Counsel deem
6 such settlement to be fair, reasonable and adequate, and in the best interests of Micromuse's
7 shareholders.

8 In full and final settlement of the Action, Micromuse will adopt and/or maintain the
9 following corporate governance measures, which are intended to avoid the type of problems
10 complained of in the Action, and which shall remain in effect for at least two (2) years from the
11 date they are adopted:

12 (a) With respect to the Board:

- 13 • Every Director shall stand for election for a two (2) year term.
- 14 • The Company shall encourage all independent directors to attend a Directors'
15 College or Corporate Governance Program. The Company shall sponsor its
16 director's attendance at any such program.
- 17 • At all times, at least a majority of the Board shall be "independent" in accordance
18 with NASDAQ listing standards. One of the independent directors shall be the Lead
19 Independent Director.
- 20 • The Board shall hold an executive session at least twice a year at which employee
21 directors are not present. The Lead Independent Director shall schedule and set the
22 agenda for these executive sessions.

23 (b) The Nominating and Corporate Governance Committee, the Compensation
24 Committee, and the Audit Committee of the Board shall each be composed entirely of
25 independent directors.

26 (c) The Compensation Committee shall set, in writing, annual and long-term performance
27 goals for the CEO and evaluate the CEO's performance against such goals.

28 (d) The Compensation Committee shall meet at least once each calendar year in executive
session without the CEO, and the CEO shall not be present for that portion of any meeting
of the Compensation Committee during which the compensation of the CEO is considered.

1 (e) The Compensation Committee shall review and approve all employment agreements,
2 separation and severance agreements, and other compensatory contracts, arrangements,
3 perquisites and payments for the Section 16 executive officers.

4 (f) The Compensation Committee shall recommend to the board of directors
5 compensation programs for non-employee directors, committee chairpersons, and
6 committee members, consistent with any applicable requirements of the listing standards for
7 independent directors and including consideration of cash and equity components of this
8 compensation.

9 (g) The Compensation Committee shall grant stock options and other discretionary
10 awards under the company's stock option and other equity incentive plans, and otherwise
11 exercise the authority of the board of directors with respect to the administration of the
12 company's stock-based and other incentive compensation plans as outlined in the
13 Compensation Committee charter. Any material amendments to a stock option plan will be
14 implemented in accordance with listing requirements of all exchanges on which Micromuse
15 stock is listed. Any stock options granted to directors or executive officers generally will
16 vest between three to four years from the date of the grant. All stock option grants shall be
17 subject to the change in control provisions of the stock option plan upon consummation of a
18 sale or merger.

19 (h) The Compensation Committee shall periodically review and make recommendations
20 to the board concerning the company's equity and incentive compensation plans consistent
21 with the Compensation Committee charter.

22 (i) The Board shall at least annually review Incentive Compensation Programs and make
23 recommendations as to modifications or changes.

24 (j) After the close of each fiscal year, the Compensation Committee shall report in
25 writing to the Company's shareholders the compensation policies and rationale applied to
26 the compensation of the Company's executive officers during that fiscal year.

27 (k) The Nominating and Corporate Governance Committee shall be comprised of
28 independent directors. A majority of the independent directors shall serve on that
committee.

(l) The Nominating and Corporate Governance Committee shall periodically assess,
develop and communicate with the full board concerning the appropriate criteria for
nominating and appointing directors, including the board's size and composition; corporate
governance policies; applicable listing standards and laws; individual director performance,
expertise and willingness to serve actively; number of other public and private company
boards on which a director candidate serves; consideration of director nominees timely
proposed by stockholders in accordance with the bylaws; and other appropriate factors.

(m) Shareholders may nominate directors as permitted by the Company's bylaws.

(n) The Nominating and Corporate Governance Committee shall recommend to the board
of directors the individuals to be nominated for election as directors at each annual meeting

1 of stockholders and to fill vacancies on the board of directors, subject to legal rights, if any,
2 of third parties to nominate or appoint directors.

3 (o) The Nominating and Corporate Governance Committee shall, if and when requested
4 periodically by the board, identify and recommend to the board the appointees to be selected
by the board for service on the committees of the board.

5 (p) The Nominating and Corporate Governance Committee shall develop, assess and
6 make recommendations to the board concerning appropriate corporate governance policies.

7 (q) The Audit Committee shall be comprised of at least three independent directors. Each
8 committee member must be financially literate upon appointment to the committee, as
9 determined by the board of directors pursuant to the listing standards. At all times, there
10 must be at least one member of the Audit Committee who, as determined by the board of
11 directors, meets the finance, accounting or comparable experience requirement of the listing
standards. In addition, the board of directors must annually evaluate whether or not at least
one member of the committee is an audit committee financial expert as defined in the SEC
rules.

12 (r) The Audit Committee shall have sole authority and direct responsibility for the
13 appointment, compensation, retention, termination, evaluations and oversight of the work of
14 the independent auditors engaged by the company for the purpose of preparing or issuing an
15 audit report of related work or performing other audit, review or attest services for the
company. The independent auditors must report directly to the Audit Committee. The
Audit Committee's authority includes, without limitation, resolution of disagreements
between management and the auditors regarding financial reporting.

16 (s) The Board's Committees shall have standing authorization, on their own decision, to
17 retain legal and/or other advisors of their choice, which advisors shall report directly to the
Committee.

18 (t) The Audit Committee shall conduct quarterly meetings during which there shall be
19 time set aside at each meeting for the Audit Committee to meet with the outside auditors
20 without Company management being present.

21 (u) The Audit Committee shall review and discuss with appropriate members of the
22 company's management the audited financial statements, related accounting and auditing
23 principles and practices, and management's assessment of internal control over financial
reporting and the related reports on internal control to be included in the company's Annual
Report on Form 10-K.

24 (v) The Audit Committee shall timely request and receive from the independent auditors
25 (prior to each filing of the audit report with the SEC) the report required in connection with
26 the annual audit pursuant to applicable SEC rules concerning (1) all critical accounting
27 policies and practices to be used; (2) all alternative treatments within generally accepted
28 accounting principles for policies and practices related to material items that have been
discussed with management of the company, including: (i) ramifications of the use of such
alternative disclosures and treatments; and (ii) the treatment preferred by the independent
auditors; and (3) other material written communications between the independent auditors

1 and the management of the company, such as any management letter or schedule of
2 unadjusted differences.

3 (w) The Audit Committee shall conduct a quarterly review including a review of the
4 quarterly financial statements of the Company and the results of the independent auditors'
5 review of these financial statements. So long as the Company remains a publicly traded
6 company, the Company shall engage an independent auditing firm to perform an annual
7 audit of its financial statements.

8 (x) The Company shall rotate its independent auditing firm's lead partner and concurring
9 partner at least once every five (5) years. The Company's independent auditor shall not
10 provide any consulting services to the Company except as may be permissible under Section
11 201 of the Sarbanes-Oxley Act and the rules and regulations promulgated thereunder.

12 (y) The Company's independent auditor may not perform any consulting work or provide
13 personal tax or financial planning advice to any officer or director of the Company.

14 (z) Shareholder proposals may be made in accordance with the Company's bylaws,
15 Article II.

16 (aa) The Board shall adopt the insider trading policy attached as Exhibit A to the
17 Corporate Governance Measures attached as Exhibit A to the Settlement Stipulation.

18 (bb) The Board shall adopt the Code of Business Conduct attached as Exhibit B to the
19 Corporate Governance Measures attached as Exhibit A to the Settlement Stipulation.

20 (cc) The Board shall adopt the Incentive Compensation Program attached as Exhibit C to
21 the Corporate Governance Measures attached as Exhibit A to the Settlement Stipulation.

22 In addition to the above therapeutic corporate governance measures, Defendants, as part
23 of the Settlement, have approved and will take all reasonable actions to cause the payment of
24 funds made available by the Individual Defendants' Directors' and Officers' liability Insurers as
25 required to resolve the related Class Action lawsuit pending against the Company.

26 In consideration for implementing the therapeutic corporate governance measures and
27 resolving the Class Action, upon the "Effective Date" Derivative Plaintiff and Micromuse (as a
28 nominal defendant in the Federal Derivative Action) will release all "Released Claims" (as
defined in the Stipulation) against the "Released Persons" (as defined in the Stipulation).

As more specifically defined in the Stipulation, "Released Claims" means any and all
claims, demands, rights, liabilities, and causes of action of every nature and description
whatsoever, known or unknown, whether or not concealed or hidden, including, without

1 limitation, claims based on federal, state, local, statutory or common law or any other law, rule
2 or regulation, asserted or that might have been asserted by Micromuse or by Micromuse
3 shareholders on behalf of Micromuse against Defendants or any of the Released Persons arising
4 out of, based upon, or related in any way to the facts, transactions, events, matters, occurrences,
5 acts, disclosures, statements, schemes, representations, failure(s) to act or omissions alleged in
6 the Federal Derivative Action.

7 As more specifically defined in the Stipulation, "Released Persons" means the
8 Defendants in the Federal Derivative Action, or any of them, or any of their present or former
9 officers, directors, employees, agents, attorneys, stockholders, financial advisors, accountants,
10 commercial bank lenders, investment bankers, representatives, affiliates, associates, parents,
11 subsidiaries, general and limited partners and partnerships, heirs, executors, administrators,
12 successors and assigns.

13 With respect to the Federal Derivative Action, the "Effective Date" will occur upon:
14 (i) preliminary approval of the Settlement, entry of a Court Order approving the Settlement, and
15 entry of Judgment; and (ii) approval of the settlement of the Class Action.

16 Plaintiff's Counsel in the Federal Derivative Action intend to apply for fees and
17 reimbursement of expenses of up to \$250,000.00 incurred in pursuing the Federal Derivative
18 Action. Plaintiff's Counsel in the Federal Derivative Action have expended considerable time
19 and effort in the prosecution of this litigation. Plaintiff's Counsel worked wholly on a
20 contingency basis, and have advanced expenses of the litigation, in the expectation that if they
21 were successful in obtaining relief in the Federal Derivative Action, they would be paid for their
22 time and effort in prosecuting the litigation.

23 **4. THE FAIRNESS HEARING**

24 A hearing on the fairness of the Settlement will be held before the Honorable Bernard
25 Zimmerman in the United States Courthouse, 450 Golden Gate Avenue, 15th Floor, Courtroom
26 G, San Francisco, California at 1:30 p.m., on December 7, 2005 (the "Settlement Fairness
27 Hearing"). The purpose of the Settlement Fairness Hearing will be to determine (a) whether the
28 Settlement of the Federal Derivative Action is fair, reasonable and adequate; and (b) whether the
FEDERAL DERIVATIVE ACTION NOTICE OF PROPOSED SETTLEMENT (VERSION FOR WEBSITE)

1 application for attorneys' fees and reimbursement of expenses should be approved. The Court
 2 may adjourn or continue the Settlement Fairness Hearing without further notice to you or to
 3 Micromuse's shareholders. If you intend to attend the Settlement Fairness Hearing, you should
 4 confirm the date and time with Plaintiff's Counsel.

5 **5. THE RIGHT TO OBJECT**

6 You may object to the Settlement. To object, you must send a signed letter as outlined
 7 below, stating that you object to the proposed settlement in *Greg Sutterfield, derivatively and on*
 8 *behalf of Micromuse, Inc. v. Lloyd Carney, et al., Defendants and Micromuse, Inc., Nominal*
 9 *Defendant*, Case No.C-04-0893-BZ. Be sure to include your name, address, telephone number
 10 and your signature; provide proof of current ownership and the date(s) of purchase(s) of
 11 Micromuse stock, and state the reasons why you object to the Federal Derivative Action
 12 Settlement. Your objection must be filed with the Claims Administrator at the following address
 13 on or before November 15, 2005:

14 Claims Administrator
 15 *Sutterfield v. Carney et al.*
 16 c/o A.B. Data. Ltd.
 17 P.O. Box 170500
 18 Milwaukee, Wisconsin, 53217-8041
 19 1 (800) 918-9012

20 Dated:

21 By Order of the Court
 22 San Francisco, California
 23 CLERK OF THE COURT
 24
 25
 26
 27
 28


Legal Tabs Co. 800-322-3022 

EXHIBIT B-3

1 FEDERMAN & SHERWOOD
William B. Federman
2 120 N. Robinson, Suite 2720
3 Oklahoma City, OK 73102
Telephone: (405) 235-1560
4 Facsimile: (405) 239-2112

5 GREEN WELLING LLP
Robert S. Green (SBN 136183)
6 595 Market Street, Suite 2750
7 San Francisco, CA 94105
Telephone: (415) 477-6700
8 Facsimile: (415) 477-6710

9 Attorneys for Plaintiff

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 GREG SUTTERFIELD, Derivatively On Behalf
of MICROMUSE, INC.,

No. C-04-0893 BZ

14 Plaintiff,

15 vs.

16 LLOYD CARNEY, et al.,

17 Defendants.

18 - and -

19 MICROMUSE, INC., a Delaware corporation,

20
21 Nominal Defendant.

Date: December 7, 2005
Time: 1:30 p.m.
Place: Courtroom G, 15th Floor
Judge: Bernard Zimmerman

FEDERAL DERIVATIVE ACTION

22
23
24 **SUMMARY NOTICE OF PENDENCY OF PROPOSED SETTLEMENT OF FEDERAL**
25 **DERIVATIVE ACTION AND SETTLEMENT HEARING**

26 TO: ALL PERSONS AND ENTITIES WHO OWN COMMON STOCK OF MICROMUSE
27 INC.

28 SUMMARY NOTICE OF PENDENCY OF PROPOSED SETTLEMENT OF DERIVATIVE ACTION
No. C-04-0893 BZ
SF/21636940.1

1 YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District
 2 Court for the Northern District of California, that a hearing will be held before the Honorable
 3 Bernard Zimmerman, United States Magistrate Judge, 450 Golden Gate Ave, 15th Floor,
 4 Courtroom G, San Francisco, California 94102, on December 7, 2005, at 1:30 p.m. (the
 5 "Settlement Fairness Hearing") for the purposes of determining (1) the fairness, reasonableness,
 6 and adequacy of the Settlement; and (2) the applications for attorneys' fees.

7 The Federal Derivative Action, filed on March 4, 2004, alleges that the Individual
 8 Defendants, current or former officers and directors of Micromuse, owed a duty to Micromuse
 9 and its shareholders to be reasonably informed about the business and operations of the
 10 Company. Plaintiff further alleges that the Individual Defendants breached these duties by
 11 actively participating in, encouraging, sponsoring and/or approving of the wrongful acts or
 12 omissions complained of in the Complaint, or purposely or recklessly disregarding those
 13 wrongful acts or omissions. Defendants, while continuing to deny all allegations of wrongdoing
 14 or liability, desire to settle and terminate the existing and potential claims against them, without
 15 in any way acknowledging any fault or liability. Further detail regarding the Settlement may
 16 viewed online at Micromuse's web page, www.micromuse.com, by clicking on "company" and
 17 then on "investor relations," or by typing in your web browser:

18 www.corporate-ir.net/ireye/ir_site.zhtml?ticker=MUSE&script=2100. To object, you must
 19 send a signed letter as outlined below, stating that you object to the proposed settlement in *Greg*
 20 *Sutterfield, derivatively and on behalf of Micromuse, Inc. v. Lloyd Carney, et al., Defendants and*
 21 *Micromuse, Inc., Nominal Defendant*, Case No.C-04-0893-BZ. You must include your name,
 22 address, telephone number and your signature; provide proof of current ownership and the
 23 date(s) of purchase(s) of Micromuse stock, and state the reasons why you object to the
 24 Derivative Action Settlement. Your objection must be filed with the Claims Administrator at the
 25 following address on or before November 15, 2005:

26 Claims Administrator
 27 *Sutterfield v. Carney et al.*
 28 c/o A.B. Data. Ltd.

1 P.O. Box 170500
2 Milwaukee, Wisconsin, 53217-8041
3 1 (800) 918-9012

4 If you are a current Micromuse shareholder and do not submit an objection, you will have
5 waived any and all objections and shall forever be barred from making any objection to or
6 otherwise challenging the Derivative Action Settlement, the final judgment dismissing the
7 Derivative Action, or any other proceedings in the action.

8 Inquiries may be made to Derivative Plaintiffs' Counsel:

9 William B. Federman
10 Federman & Sherwood
11 120 N. Robinson, Suite 2720
12 Oklahoma City, OK 73102
13 Telephone: (405) 235-1560

14 **PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE**
15 **REGARDING THIS NOTICE.**

16 Dated:

17 BY ORDER OF THE COURT
18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
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